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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 United States of America,  
10 Plaintiff,

11 v.

12 Barrett Firearms MFG CO 82A1, Rifle  
13 CAL:50 BMG, SN: AA013938,  
14 Defendant.

No. CV-22-01573-PHX-SMM

**ORDER**

15 Pending before the Court is Plaintiff's Motion for Default Judgment of Forfeiture.  
16 (Doc. 10).

17 On September 16, 2022, Plaintiff the United States of America filed this civil *in rem*  
18 forfeiture action against Defendant property. (Doc. 1). Because no party appeared,  
19 answered, or otherwise pleaded, the Clerk of the Court entered default on November 28,  
20 2022. (Doc. 9). Plaintiff now moves for default judgment pursuant to Federal Rule of Civil  
21 Procedure 55 and Supplemental Rule G. (Doc. 10). For the following reasons, the Motion  
22 is granted.

23 **I. Background**

24 Because the Clerk entered default, the Court will take the Complaint's factual  
25 allegations as true. See Geddes v. United Fin. Grp., 559 F.2d 557, 560 (9th Cir. 1977)  
26 (stating that upon default, a complaint's allegations are taken as true, except those relating  
27 to damages).

28 In 2016, Enrique Gonzales-Quintero pled guilty in Arizona superior court to

1 Possession of Narcotic Drugs for Sale, a class two felony. (Doc. 1 at 2). The felony carried  
2 a sentencing range of four to ten years' imprisonment but under the terms of the plea deal,  
3 Gonzales-Quintero was sentenced to two years' probation. (Id. at 3).

4 On April 7, 2022, Gonzales-Quintero placed an online order for a Barrett .50 caliber  
5 rifle from a Federal Firearms Licensee (FFL) in Rhode Island. (Id. at 2). This rifle is the  
6 Defendant property. The seller shipped the rifle to a pawn shop in Arizona, where  
7 Gonzales-Quintero lives. (Id.) Following a tip about suspicious activity by an out-of-state  
8 FFL, Special Agents with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)  
9 contacted the pawn shop and learned that Gonzales-Quintero was due to pick up the rifle  
10 on April 14, 2022. (Id.) The Special Agents also learned of Gonzales-Quintero's  
11 aforementioned sentence. (Id.)

12 Prior to purchasing a firearm from an FFL, the purchaser must complete ATF Form  
13 4473 which requires the purchaser to provide information including whether they have ever  
14 been convicted in any court of a crime for which the judge could have imprisoned them for  
15 more than a year, even if they received a shorter sentence including probation. (Id. at 3). A  
16 purchaser is prohibited from receiving or possessing a firearm if they answer affirmatively  
17 to the question about having been convicted of a crime. (Id.) After a purchaser completes  
18 Form 4473, the FFL enters the information provided by the purchaser into a background  
19 check system. (Id. at 4).

20 Upon entering the pawn shop on April 14, 2022, Gonzales-Quintero completed  
21 Form 4473, stating on the form that he was the actual buyer of the rifle and that he had  
22 never been convicted of a felony for which the judge could have imprisoned him for more  
23 than one year. (Id.) The pawn shop entered this information into the background check  
24 system and it came back as "Denied," thus prohibiting the pawn shop from transferring the  
25 rifle to Gonzales-Quintero. (Id.)

26 Having surveilled the pawn shop from its parking lot, Special Agents with ATF  
27 watched Gonzales-Quintero as he drove away from the pawn shop following his  
28 unsuccessful attempt at picking up the rifle. (Id.) Shortly thereafter, a state trooper observed

1 Gonzales-Quintero make an unsafe lane change and stopped him based on this offense. (Id.  
2 at 5). ATF Special Agents responded to the traffic stop and interviewed Gonzales-Quintero.  
3 (Id.) During the interview, Gonzales-Quintero admitted to pleading guilty to drug charges  
4 and having been sentenced to probation, although he stated that he thought the charge was  
5 reduced to a misdemeanor due to the length of time that had passed between arrest and  
6 conviction. (Id. at 5-6).

7 Following this interview, the ATF Special Agents traveled to the pawn shop and  
8 seized the rifle. On May 16, 2020, ATF commenced administrative forfeiture and on June  
9 20, 2022, Gonzales-Quintero filed a claim to the rifle with ATF. (Id. at 6). On September  
10 16, 2022, Plaintiff the United States of America filed this civil *in rem* forfeiture action  
11 against Defendant property, based on the rifle's involvement in a violation of providing  
12 materially false information to an FFL in violation of 18 U.S.C. §§ 922(a)(6) and  
13 924(a)(1)(A). (Doc. 1).

## 14 **II. Legal Standard**

15 Although courts strongly prefer to decide cases on their merits, they may use their  
16 discretion to enter default judgment. Eitel v. McCool, 782 F.2d 1470, 1472 (9th Cir. 1986);  
17 see also Fed. R. Civ. P. 55. If default judgment is sought against a party that failed to plead  
18 or otherwise defend, courts must determine they have subject matter jurisdiction over the  
19 matter and personal jurisdiction over the party. In re Tuli, 172 F.3d 707, 712 (9th Cir.  
20 1999).

21 Once a court finds that it has jurisdiction, it must apply the multi-part test established  
22 by Eitel, considering: “(1) the possibility of prejudice to the plaintiff, (2) the merits of  
23 plaintiff's substantive claim, (3) the sufficiency of the complaint, (4) the sum of money at  
24 stake in the action; (5) the possibility of a dispute concerning material facts; (6) whether  
25 the default was due to excusable neglect, and (7) the strong policy underlying the Federal  
26 Rules of Civil Procedure favoring decisions on the merits.” 782 F.2d at 1471–72.

## 27 **III. Discussion**

28 As an initial matter, the Court has jurisdiction over this action. District courts have

original jurisdiction over any forfeiture action incurred under any act of Congress, except matters dealing with international trade. 28 U.S.C. § 1355(a). Forfeiture actions may be brought in the district court where any part of the forfeiture arose. Id. at § 1355(b). Because the Defendant property was seized in Arizona, (Doc. 1 at 2), this civil forfeiture action was properly brought in this District and the Court has jurisdiction over the action. Accordingly, the Court will now consider the Eitel factors.

#### **A. Prejudice to Plaintiff**

If default judgement were denied, Plaintiff would be prejudiced by needing to litigate and spend further resources on an action with no opposing party. See United States v. \$19,520.00 in U.S. Currency, 2021 WL 1947518, at \*2 (D. Ariz. May 14, 2021). The first factor therefore weighs in favor of granting default judgment.

#### **B. Merits of Plaintiff's Substantive Claim and Sufficiency of Plaintiff's Complaint**

The second and third Eitel factors—the merits of the claim and the sufficiency of the complaint—are often analyzed together and are often considered the most important. Vietnam Reform Party v. Viet Tan - Vietnam Reform Party, 416 F. Supp. 3d 948, 962 (N.D. Cal. 2019). In assessing these factors, courts must consider whether a plaintiff has stated a claim on which it may recover. Id.

Here, both factors weigh in favor of granting default judgment. Taken as true, as they must be here, the factual allegations establish that the defendant property was used in a knowing violation of 18 U.S.C. §§ 922(a)(6) and 924(a)(1)(A). These provisions prohibit false statements made in connection with the attempted acquisition of a firearm from a licensed dealer. Gonzales-Quintero purchased and attempted to possess the rifle, knowing that he had pled guilty to a crime for which he could have been sentenced to over a year and for which he ultimately served two years' probation. Nonetheless, when completing Form 4473, he stated that he had never been convicted of a crime for which the judge could have imprisoned him for more than one year. These written statements therefore constituted false statements made in connection with the attempted acquisition of a firearm from a

1 licensed dealer. As such, Plaintiffs have stated a valid claim under these statutes. These  
2 factors thus strongly favor default judgment.

3 **C. The Money at Stake**

4 Including tax and delivery costs, Gonzales-Quintero spent a total of \$9,737.79 on  
5 the rifle. (Doc. 1 at 2). Although this is not an insignificant outlay, it is not especially  
6 remarkable or astronomical. This factor does not strongly weigh against entering default  
7 judgment.

8 **D. Possibility of Dispute**

9 No party has appeared to defend this action and the Court must view the Complaint's  
10 allegations as true. See Geddes, 559 F.2d at 560. Therefore, the possibility of dispute is  
11 very low and this factor weighs in favor of entering default judgment.

12 **E. Excusable Neglect**

13 Because no claimant has pleaded or otherwise appeared in this action, there is no  
14 indication that default was due to excusable neglect.

15 **F. Policy Favoring Decisions on the Merits**

16 While this Court strives to decide cases on their merits, that is not possible here  
17 because no party has pleaded or otherwise appeared this action.

18 Having considered all of the Eitel factors, the Court concludes that default judgment  
19 is appropriate.

20 Accordingly,

21 **IT IS HEREBY ORDERED granting** Plaintiff's Motion for Default Judgment of  
22 Forfeiture. (Doc. 10).

23 **IT IS FURTHER ORDERED directing** the Clerk of Court to enter judgment by  
24 default in favor of Plaintiff the United States of America.

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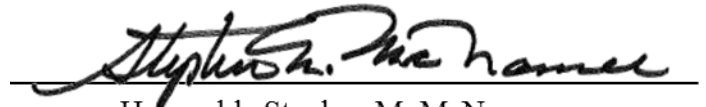
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1           **IT IS FURTHER ORDERED** that the interests of Enrique Gonzales-Quintero and  
2 all others in Defendant Barrett Firearms MFG CO 82A1, Rifle CAL:50 BMG, Serial  
3 Number AA013938 is forfeited to the United States of America in accordance 18 U.S.C. §  
4 924(d). Defendant property shall be disposed of according to law.

5           Dated this 4th day of January, 2023.

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8           Honorable Stephen M. McNamee  
9           Senior United States District Judge  
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